

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSEPH KAMELGARD,

Plaintiff,

V.

THE AMERICAN COLLEGE OF
SURGEONS, ET AL.,

Defendants.

Case No. 08 CV 3211
Honorable Suzanne B. Conlon

**MOTION TO VACATE TECHNICAL DEFAULT AND
FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING**

NOW COMES defendant, Dr. Jerzy Macura (“Dr. Macura”), by his undersigned counsel, Daniel Purdom and Adam L. Saper, and as his Motion to Vacate Technical Default and for Enlargement of Time to File Responsive Pleading, state as follows:

1. Despite that Dr. Macura has never been properly served with the summons or complaint in this case, the Court entered a technical default against him by order dated July 21, 2008.

2. Plaintiff purported to serve Dr. Macura by serving a risk manager at a hospital at which Dr. Macura practices with the summons and complaint. (Macura Affidavit, Ex. A). Said person was not authorized to accept service for Dr. Macura and service upon said person is not effective service upon Dr. Macura. (Macura Affidavit, Ex. A). In addition, even if said service had been effective (which it was not), the summons and complaint were served upon the risk manager on July 9, 2008. (Macura Affidavit, Ex. A). The summons, attached as Exhibit B, states that a responsive pleading is to be served within thirty (30) days of the date of receipt of

the summons and complaint. Thus, even if service had been effective, Dr. Macura's responsive pleading would not yet be due according to the summons.

3. Dr. Macura requests that the technical default be vacated. In addition, Dr. Macura has just retained the undersigned counsel and requests until September 6, 2008 to answer or otherwise plead to the Complaint. Dr. Macura will be moving to dismiss some and probably all of the Complaint.

WHEREFORE, defendant, Dr. Jerzy Macura, respectfully requests this Court to vacate the technical default it entered for failure to answer or otherwise plead, grant him until September 6, 2008 in which to answer or otherwise plead, and grant such other and further relief as the Court deems appropriate.

JERZY MACURA

By: /s/ Adam L. Saper
One of His Attorneys

Daniel Purdom, Esq.
Adam L. Saper, Esq.
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Chicago, Illinois 60601
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asaper@hinshawlaw.com

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on August 7, 2008, I served this **MOTION TO VACATE TECHNICAL DEFAULT AND FOR ENLARGEMENT OF TIME TO FILE RESPONSIVE PLEADING** by filing it with the Court's CM/ECF system, which will make copies of the document available to all counsel of record on August 7, 2008:

By: /s/Adam L. Saper

Service List

Miles J. Zaremski
Zaremski Law Group
707 Skokie Blvd.
Suite 600
Northbrook, IL 60062

Myron F. Mackoff
Richardson & Mackoff
407 South Dearborn
Suite 1310
Chicago, Illinois 60605

Brendan J. Healey
Natalie Anne Harris
Steven P. Mandell
Mandell, Menkes LLC
333 West Wacker Drive
Suite 300
Chicago, Illinois 60606

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH KAMELGARD,)

Plaintiff,)

v.)

THE AMERICAN COLLEGE OF
SURGEONS, ET AL.,)

Defendants.)

Case No. 08 CV 3211

Honorable Suzanne B. Conlon

AFFIDAVIT OF DR. JERZY MACURA

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies under oath, deposes and states that the statements set forth in this Affidavit are true and correct and based on his personal knowledge, and that if called as a witness in the above-captioned matter, he is competent to testify and would testify, as follows:

1. I am over the age of 18 and legally competent to attest to the matters set forth herein.
2. I have never been served with the Summons and Complaint in the above-captioned case.
3. The Summons and Complaint were served upon a person employed as a Risk Manager at a hospital at which I practice medicine. That person received the Summons and Complaint on July 9, 2008.
4. The Summons that was served upon the Risk Manager on July 9, 2008 stated that an answer was to be within served thirty (30) days after the date of receipt of the Summons.

FURTHER AFFLIANT SAYETH NAUGHT.



Dr. Jerzy Macura

EXHIBIT “B”

JUL 02 2008 3:03 PM LINE PROCESS SERVICE

631-683-2303

P. 2

JUN 30 2008 4:16 PM HP LASERJET FAX

W 7/9/07
P. 13

AD-410 (Rev. 05/03) Summons in a Civil Action

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

Joseph Kandigard

Plaintiff

v.

American College of Surgeons, et al.

Defendant.

CASE NUMBER: 08 CV 3211

ASSIGNED JUDGE: Suzanne B. Conlon

DESIGNATED
MAJESTRATE JUDGE: Morton Denlow

TO: (Name and address of defendant)

Dr. Jerry Malena, M.D.
948 45th St., 2nd Fl.
Brooklyn, New York 11219

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Myron F. Blackoff
Richardson & Blackoff
407 S. Dearborn St., Ste. 1310
Chicago, Illinois 60605an answer to the complaint which is herewith served upon you, within 70 (Thirty) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

MICHAEL W. DORRIS, CLERK

(By) DEPUTY CLERK

DATE

Jul 02 2008 3:57AM U-ME Process Service 681-668-2905

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Jun 30 2008 4:28PM HP LASERJET P1102

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AO 100 (Rev. 05/00) (Summons in Civil Action)

RETURN OF SERVICE		
Service of the summons and complaint was made by me on	DATE	
NAME OF SERVER (PRINT)	TITLE	
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
<input type="checkbox"/> Returned unaccepted: _____ _____ _____		
<input type="checkbox"/> Other (specify): _____ _____ _____		
STATEMENT OF SERVICE FEES		
FEE FOR	SERVICES	TOTAL
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.		
Executed on _____ <div style="display: flex; justify-content: space-between;"> Date Signature of Server </div> <div style="text-align: center; margin-top: 20px;"> Address of Server _____ </div>		

(1) An affidavit may serve as substitute for Rule 4 of the Federal Rules of Civil Procedure.